In the Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-848

NORTHERN NATURAL GAS PRODUCING COMPANY and MOBIL OIL CORPORATION,

Petitioner,

vs.

HAZEL NIX and FRED SCHUPBACH, JR., Individually and as representatives of all that class of gas royalty owners under Northern Natural Gas Producing Company and Mobil Oil Corporation oil and gas leases in the Hugoton-Anadarko area,

Respondents.

BRIEF OF RESPONDENTS IN OPPOSITION

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January, 1978

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TABLE OF CONTENTS

Authorities

CASES

ARTICLES & MISCELLANEOUS

STATUTES

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OPINIONS BELOW

The opinions of the Supreme Court of the State of Kansas are as reported in the Petition. In addition, the Trial Court's Class Order and Notice are attached hereto as an Appendix. (F-1 to F-6.)

JURISDICTION

The jurisdictional requisites are set forth in the Petition for Certiorari.

QUESTION PRESENTED

The federal question, if any, is: Whether it is a violation of Northern Natural's and Mobil's (hereinafter, Mobil) due process rights or equal protection for non-resident members of plaintiff class to be included in the benefits of a Kansas State Court judgment against Mobil.

STATUTE INVOLVED

K.S.A. §60-223, Kansas Class Action Statute, as set forth in Appendix E to the Petition.

STATEMENT OF THE CASE

This is one of four cases in which major oil and gas producing companies are seeking review of opinions of the Supreme Court of Kansas finding the companies liable for interest on gas royalties *suspended* and *used* by the companies pending Federal Power Commission opinion and approval of the opinion. The other cases are:

Phillips Petroleum Company v. *Shutts, et al.*, No. 77-856;

The Superior Oil Company v. *Sterling, et al.*, No. 77-847;

Gulf Oil Corporation v. *Maddox, et al.*, No. 77-798.

Beginning in 1967, Mobil began collecting from its gas purchasers in the Hugoton-Anadarko area on the basis of increased rates as filed with the Federal Power Commission, but Mobil continued paying its gas royalty owners on the basis of the old rates.[1]

1. See Appendix A-2, A-3, Mobil's Petition for Writ of Certiorari; also *Shutts, et al.* v. *Phillips Petroleum Co.*, 222 Kan. 527, 567 P.2d 1292.

The Hugoton-Anadarko area is a rate making area for gas production as defined by the Federal Power Commission and it consists of all of the State of Kansas and certain parts of the states of Texas and Oklahoma. (See *Shutts*, Appendix A17.)

Plaintiffs Nix and Schupbach filed this action individually and as representatives of that class of oil and gas royalty owners under defendant Mobil's oil and gas leases in the Hugoton-Anadarko rate making area.

The increase in gas rates collected by Mobil went into Mobil's corporate treasury, was commingled with other corporate funds and was used by Mobil as a part of its business operations.[2]

FPC Opinion No. 586 was entered on September 18, 1970, approving most of the rate increases filed. The validity of FPC Opinion No. 586 was challenged in the courts and finally sustained on October 28, 1972.[3]

Subsequently, in May, 1973, 5,739 of Mobil's gas royalty owners were paid approximately $1,500,000.00 as their royalty interest share of the suspended rates. This amount was the royalty interest share (normally 1/8th), without interest. (A3.)

Portions of the suspended rates were not approved and were refunded to defendant Mobil's gas purchasers with interest at the rate of 7% per annum until October 1, 1970, and at the rate of 8% per annum thereafter until refunded.[4]

The FPC has no jurisdiction over amounts paid to gas royalty owners (*Mobil Oil Corp.* v. *Federal Power Com-*

2. See Appendix A21.

3. See *Shutts*, Appendix A24.

4. See *Shutts*, Appendix A19.

mission, 463 F.2d 256) (D. C. Cir.), cert. denied, 406 U.S. 1976 (1972) and had no regulations purporting to cover interest in relation to royalty interests in the suspended payment held and used by Mobil.

Plaintiffs were allowed to proceed by order of the Kansas District Court, as a class action, and all members of the class were served with notice by first class mail and by publication.[5]

Mobil was not required by FPC or any other authority to keep the royalty owners' share of suspense monies in suspense and not pay it out; this was a matter determined by Mobil.[6]

Ordinarily, if a question of jurisdiction were to be raised as to nonresident members of plaintiff class, it would be raised by a nonresident member in the court of another state, after judgment against plaintiff class. However, in this case, Mobil attempts to raise the question of jurisdiction of the Kansas courts over nonresident members after judgment in favor of plaintiff class, in order to save itself from paying a substantial part of the judgment against it. Statutes of limitation have run against the payment of interest on the FPC suspense royalties in Oklahoma and Texas.[7] Royalty owners in the Hugoton-Anadarko area are not entitled to go into the federal court and bring a class action because most of the claims are less than $10,000.00.[8] This leaves the Kansas court as the only forum and the Kansas court's judgment in this case as the only possibility of nonresidents obtaining interest on the FPC royalty funds here involved.

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5. See Appendix F, this Brief for full copy of Trial Court's Class Order and Notice.

6. See *Shutts*, A62.

7. See *Shutts*, A37.

8. See *Shutts*, A36 and cases there cited.

Mobil does business in Kansas and has been duly served with process in Kansas. No question is asserted as to the jurisdiction of the trial court or the Supreme Court over the defendant or the trial court's power to enforce a judgment against the defendant.

Mobil asserts the class includes nonresidents having no contact with Kansas. (Question Presented, Petition 3.) Not so. Whether or not "minimum contacts" are necessary, the many contacts that tie this certain group of Mobil royalty owners together are enumerated in the *Shutts* opinion, A55 and A56, as follows:

1. The names, addresses and suspense royalty amounts for each of the royalty owners are readily available in Mobil's records.

2. The class is more manageable with nonresidents of Kansas included because Mobil would be required to take an extra step in separating nonresident royalty owners in its records.

3. Mobil treated all royalty owners in the Hugoton-Anadarko area alike, regardless of residency, particular lease provisions or royalty agreements.

4. Kansas has a legitimate interest in adjudicating the common issue herein because Kansas comprises the largest physical area included in the FPC designated Hugoton-Anadarko area where Mobil is doing business and producing gas which it sells in interstate commerce.

5. All of the gas royalty owners in the Hugoton-Anadarko area have leases with Mobil and a common interest in the money collected by Mobil as "suspense royalties" from the sale of gas in the designated area.

6. It was the same FPC regulation that caused and permitted Mobil to collect the "suspense royalties", and the same FPC Opinion No. 586 pursuant to which the "suspense royalties" were paid out to the royalty owners in the area.

7. All of the gas royalty owners in the Hugoton-Anadarko area have a right in common with each other, in the equivalent of a common fund, to claim damages for commingling and use of the "suspense royalties" by Mobil, payable as interest, and they have a contact with Kansas by reason of such common interest.

Mobil attempts to mislead this Court by referring to the "mere mailing of a postcard" notice. (Petition 10, Footnote 10.) Notice mailed was not a postcard but was a full page notice fully advising class members of the nature and effect of the suit, the effect of a judgment favorable or unfavorable, and how to "opt out" if desired. (See full contents of Notice at Appendix to this Brief. (F-4 to F-6.) Notice was sent by *first class mail.* (Trial Court's Finding of Fact No. 6 at A74.)

REASONS FOR NOT GRANTING THE WRIT

The decision of the Kansas Supreme Court is thorough and thoughtful. The state court was fully aware of and closely adhered to the decisions of this Court. Mobil raises no issue not considered and answered in the Kansas Court's opinion. (See *Shutts,* Appendix A8 to A72 of Petition; See also the Kansas Class Action Statute, 60-223, which closely follows Federal Rule No. 23, at Appendix E of Petition.)

This Court Should Not Grant a Writ to Consider Issues Raisable, If at All, in a Later Proceeding

Mobil suggests it is denied equal protection and due process because members of the plaintiff class over whom Kansas did not have personal jurisdiction are not bound by the Kansas court judgment, and thus could relitigate their claims. Without conceding for a moment the Kansas court did not have authority to include nonresidents in the class or class members are not bound, it is significant Mobil's argument bears considering only in the event class members attempt to relitigate their claim.

The Kansas court judgment granted to members of the class everything they filed suit to secure. It is far too tenuous to assume first, a dissatisfied class member exists; second, if he does exist, he will try to relitigate the claim, having secured by Kansas judgment all he could possibly obtain; and third, if he tries to relitigate the claim the forum court will find he was not bound by the Kansas court judgment.

The nonresident members do not want to relitigate. They do not want Mobil arguing "for" them. They are a part of plaintiff class represented by this Brief. They want to be left in the case.

Mobil asks this Court to supply a wholly hypothetical answer to its wholly hypothetical question.

It Would Be Improvident for This Court to Grant a Writ to Consider Questions Readily and Consistently Answered by Its Prior Decisions

Even if Mobil's case is not hypothetical, it is contrary to this Court's opinions and well established law.

There is no challenge to the *in personam* jurisdiction over the defendant, or the Kansas court's power to enforce

a judgment against the defendant. See *Shutts* at A30. Nevertheless, Mobil relies on *International Shoe* v. *State of Washington*, 326 U.S. 310 and others pertaining to acquiring jurisdiction over a defendant. (Petition 6.) The class fully agrees with the holding of these cases. They are, however, thoroughly inapposite.

None of such cases were class actions. There was no plaintiff or defendant class in any of them. (See discussion of these cases in *Shutts*, A31 to A33.) They pertain to *defendants* only—not plaintiff classes.

"Minimum contacts" has always been held to apply to a defendant. It has never been applied to a plaintiff or plaintiff class. A plaintiff can choose his own forum.

Even if "minimum contacts" does apply, there were sufficient contacts here to justify the exercise of jurisdiction over nonresidents and to include them in the plaintiff class. (See *Shutts* A55, A56.) Since Kansas had *in personam* jurisdiction over the defendant, it likewise had jurisdiction over the common fund and thus contact with all persons who shared in the fund. For this reason, in *Hartford Life Ins. Co.* v. *Ibs*, 237 U.S. 662, 59 L. Ed. 1165, 35 S. Ct. 692, this Court held a Minnesota resident bound by an earlier Connecticut State Court judgment.[9]

In this case, the Kansas Court said:

"To hold that Phillips' act of using the money for business purposes, and not putting it in a separate corporate account, takes this case out of the 'common fund' category would reward Phillips' action at the

9. See also, *Shutts*, A46-49; and other common fund cases: *Royal Arcanum* v. *Green*, 237 U.S. 531; *Supreme Tribe of Ben-Hur* v. *Cauble*, 255 U.S. 356; *Sovereign Camp* v. *Bolin*, 305 U.S. 66; *Carpenter* v. *Pacific Mutual Life Ins. Co.*, 10 Cal. 2d 307, 74 P.2d 761 (1937), aff'd sub nom. *Neblett* v. *Carpenter*, 305 U.S. 297, reh. denied, 305 U.S. 675.

expense of innocent gas royalty owners." (*Shutts*, B37.)

Therefore, it was proper to include in the class all contributing to it, residents and nonresidents of Kansas alike.

Contacts also arose because of the first class mail notice sent to residents and nonresidents. The notice advised recipients of the pendency of the suit in Kansas, the nature and effect of the suit, afforded them an opportunity to opt out and informed them by remaining in the class they would be bound by any judgment, favorable or unfavorable. (See Notice, Appendix to this Brief F3 to F5.)

Without regard to contacts, first class mail notice provided the essential requisites of due process so as to bind members of the class.[10]

Due process was also afforded class members by adequate representation. See *Eisen* at 176. In *Shutts* at A54, the court states regarding the same attorneys:

"Here we find adequate representation has been afforded the plaintiff class members by their representative through his attorneys who have done a superior job in bringing this action and arguing and briefing the law on this appeal."

Mobil's reliance on the territorial boundaries of Kansas is equally misplaced. Procedural due process guarantees are the test of a binding judgment and the test for proceeding as a class action. Mobil's argument evidently

10. *Eisen* v. *Carlisle & Jacqueline*, 417 U.S. 156, 176; *Mullane* v. *Central Hanover Bank & Trust Co.*, 339 U.S. 306; Cf. *American Pipe & Construction Co.* v. *Utah*, 414 U.S. 542, 549; also *Advisory Committee Notes*, 28 U.S.C.A. at 302, where it is said "notice . . . is designed to fulfill requirements of due process to which the class action is of course subject."

rests on *Pennoyer* and its progeny, which "simply makes the point that states are defined by their geographical territory." *Shaffer* v. *Heitner*, ... U.S. ....., 97 S. Ct. 2569, 2580 (1977).

Mobil overlooks Federal Rules of Civil Procedure 23 does not expand federal court jurisdiction (*Snyder* v. *Harris*, 394 U.S. 332), yet typically binds class members with no contact with the forum.

Moreover, the propriety of binding absent class members outside the jurisdiction of the forum court was decided long ago. This is because there is a difference in the jurisdictional standards governing class actions and other actions. In *Hansberry* v. *Lee*, 311 U.S. 32, this court found:

> It is a principle of general application in Anglo-American jurisprudence that one is not bound by a judgment *in personam* in a litigation in which he is not designated as a party . . .
>
> To these general rules there is a recognized exception that, to an extent not precisely defined by judicial opinion, the judgment in a 'class' or 'representative' suit, . . . may bind members of the class or those represented who were not made parties to it. . .
>
> Courts are not infrequently called upon to proceed with causes in which the number of those interested in the litigation is so great as to make it difficult or impossible the joinder of all *because some are not within the jurisdiction* or because their whereabouts is unknown . . . 311 U.S. at 40-2. (Emphasis supplied.)

To bind absent class members, the due process protections of notice and representation must be afforded.[11] This was provided here and Mobil challenges neither the method of notice nor the form or quality of representation.

In *Advertising Specialty National Ass'n* v. *Federal Trade Commission*, 238 F.2d 108, 120 (1st Cir. 1956), the court found foreign members bound by a judgment in a proper class suit even though outside the jurisdiction.

Many commentators have considered the question raised by Mobil. They support the Kansas court's decision on the issue. Professor Chafee in *Some Problems of Equity*, 258 (1950) notes the Restatement of Judgments "gives the court where a class action has been properly brought jurisdiction to bind unnamed members, even if not personally within the jurisdiction of the court." Likewise, Professor Moore in his treatise, 3B Moore's Federal Practice, ¶23.11 (5), in discussing the 1928 Federal Rules of Civil Procedure 23 indicates:

> "The fact that members of the class are beyond the territorial limits of the class suit court is immaterial as to the binding effect of the class suit judgment."

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11. See page 140 of *Appleton Electric Co.* v. *Advance-United Expressways*, 494 F.2d 126, where it is said: "The notice and exclusion provisions of Rule 23 (c) (2) were designed to 'fulfill requirements of due process to which the class action procedure is of course subject.' 28 U.S.C., Rule 23, Advisory Committee's Note at 302. The clearest statement of those requirements is in *Mullane* v. *Central Hanover Bank & Trust Co.*, 339 U.S. 306, 70 S. Ct. 652, 94 L. Ed. 865 (1950). To be bound by a final judgment in a representation suit, one must be 'informed that the matter is pending and [have the opportunity] to choose for himself whether to appear or default, acquiesce or contest.' 339 U.S. at 314, 70 S. Ct. at 657. The kind of notice mandated in *Mullane* is exactly the kind of notice defendant class members will receive in this case . . . The members' contacts with the forum are as irrelevant here as were beneficiaries' contacts with the State of New York in *Mullane*."

The Restatements are also in agreement. The Restatement of Judgments states:

> Section 26. Representative or Class Actions.
>
> "Where a class action is properly brought by or against members of a class the court has jurisdiction by its judgment to make a determination of issues involved in the action which will be binding as res judicata upon other members of the class, although such members are not personally subject to the jurisdiction of the court."

Tentative draft number 2 of the Restatement (Second) of Judgments §85 (April 15, 1975) provides:

> "(2) A person represented by a party to an action is bound by the judgment even though the person himself does not have notice of the action, is not served with process, or is not subject to the service of process."

See also, Note, "Consumer Class Action of a Multi-State Class: A Problem of Jurisdiction," 25 Hast. L. J. 1411, 1432, 1435 (1974);[12] and 30A C.J.S. *Equity* §1456 (4) at 124.

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12. 25 Hastings Law Journal, 1411, pages 1432 and 1435: "A class action must proceed in the absence of almost every class member. Therefore, ultimately, the residential makeup of a class is unimportant. What is important is that the rights of absent members be justly protected and that members be given an opportunity to be heard if they so desire. These are the essential elements of due process, and they must be satisfied in any class action by every court, state or federal, regardless of the residences of the absent class members. Therefore, whereas the essential jurisdiction over a nonresident *defendant* is some tangible connection between him and the forum state, the *element necessary to the exercise of jurisdiction over plaintiff classes is procedural due process.* (Emphasis supplied.) (Page 1432.). . .

"It is . . . the suggestion of this note that by adhering to the same jurisdictional standards of due process required on the federal level, state courts *can* exercise jurisdiction over a class action regardless of the citizenship of the class members." (Page 1435.)

This Court has implicitly concluded class actions with a multi-state class can and should be brought in state courts. In *Snyder* v. *Harris*, 394 U.S. 332, the Court noted class actions premised on diversity of citizenship can "most appropriately be tried in state court" (Id. at 341) and plaintiffs "had nothing to fear from trying the lawsuit in the courts of their own state." (Id. at 340.) (See, also *Zahn* v. *International Paper Co.*, 414 U.S. 291.) This led the court in *Shutts* to question, at A37, "[i]f the state courts will not hear the matter, who will grant relief?" See *Supreme Tribe of Ben-Hur* v. *Cauble*, 255 U.S. 356, 366.

The meaning of the words "due process" evidently escapes Mobil. Fair play and substantial justice have been afforded all. "Fair play and substantial justice" (as called for in *Shaffer* v. *Heitner*, *supra*) can only be afforded nonresident members of plaintiff class by allowing them the benefit of their judgment against Gulf—not by taking it away from them. An *in personam* judgment against the defendant has been rendered which will benefit class members who after notice and representation elected to stay in the class.

Judge Morris E. Frankel noted:

> "If all the pertinent criteria are fairly satisfied, I believe we'll discover that the preliminary shock of 'binding' absent people will subside or disappear and that the intended functioning of the [class action] rule . . . actually promotes essential fairness and justice no less than the secondary goal of judicial efficiency." (43 F.R.D. 45, 46.)

See also Homburger, "State Class Actions and the Federal Rule," 71 Colum. L. Rev. 601, 641 (1971), arguing in many cases the denial of class relief would be "tan-

tamount to the denial of substantive justice." Separate suits in each of the many states where class members reside would be an extraordinarily inefficient, expensive and burdensome method of proving the liability. Mobil is merely attempting to eliminate or diminish its liability through a subterfuge.

Mobil argues that there is one Pennsylvania case and one New Jersey case opposed to the *Shutts* opinion. There is no contradiction in the holding of various state courts as to the law. Both the Pennsylvania and New Jersey cases were discussed in *Shutts* (A-43 to 46) and held inapplicable for reasons there stated.[13]

Mobil contends that its royalty owners had "no gas to sell" and "no interest in the proceeds of sale." (Petition 17.) The Kansas court answered this mistaken contention very well at A65 and A21, A22.[14]

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13. (a) Re: *Klemow* (Pa.): "It is apparent the Pennsylvania statutory language is completely at variance with the Kansas statutory language." See *Shutts* at A41, and the sharp difference in the Pennsylvania statute as compared to Kansas where it is said in the Pennsylvania statute as to a class action:

". . . the judgment in such action shall not impose personal liability on anyone not a party hereto."

(b) Re: *Feldman* v. *Bates* (N.J.): "An excellent example of a *factual situation* in which a trial judge applying our class action statute should deny certification of a class action, where nonresident plaintiff class members are involved, is presented in *Feldman* v. *Bates Mfg. Co., supra.*" (*Shutts*, A-52.)

14. "We are dealing with 'suspense royalties' which never could or would belong to Phillips." (*Shutts*, A65.)

"It is important to note that during this period of time (June 1, 1961, to October 1, 1970) *Phillips had no entitlement to the gas royalty owners' share of the 'suspense royalties,' whether or not the rates were approved by FPC.* Phillips never owned the money. . . . That royalty share, according to eventual FPC ruling, was either to go to Phillips' royalty owners or back to Phillips' gas purchasers with interest or part to one and part to the other." (*Shutts*, A21, A22.)

Cases cited by Mobil holding that royalty owners are not engaged in the "sale of gas" are readily distinguishable.

Mobil further argues that there is a provision in K.S.A. 60-223 not included in Federal Rule of Civil Procedure 23 that forecloses a nonresident member of plaintiff class from opting out—thereby violating his constitutional rights.

This is a moot question. No member of plaintiff class in this case asked to be excluded who was not excluded. (Conclusion of Law No. 10, A79.)

The decision of the Kansas court clearly is correct and consistent with the decisions of this Court and other well established law. Mobil raises no questions not answered by the opinion in *Shutts*, and this Court's own decisions.

CONCLUSION

The Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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January, 1978

APPENDIX F

CLASS ORDER AND ORDER FOR NOTICE

(Filed March 26, 1975)

ON this 10th day of February, 1975, this matter comes regularly on for hearing on plaintiffs' Motion for an Order determining this action to be a class action. Plaintiffs are present by their attorneys, Gordon Penny of Chapin & Penny, Medicine Lodge, Kansas, and Gary Hathaway of Hathaway & Kimball, Ulysses, Kansas. The defendants are present by their attorney, Richard Jones of Hershberger, Patterson & Jones, 700 Farm Credit Banks Building, Wichita, Kansas 67202.

THEREUPON, plaintiffs' Motion is presented and argued to the Court. Thereafter, the matter is briefed by counsel for the parties; and the Court, having examined the pleadings and files herein, having heard the statements and arguments of counsel, having read the briefs, and being well and fully advised in the premises, files his Memorandum Opinion herein dated November 7, 1974, which is made a part hereof by reference and further finds that this action should be maintained as a class action, subject to the limitations and conditions hereinafter set forth.

Thereafter, defendants file their Motion for reconsideration and oral argument of the same is duly presented to the Court on February 18, 1975, and the matter is briefed to the Court by the parties, and the Court, having heard the arguments, having read the briefs, and being well and fully advised in the premises further finds that the action complies with the requirements of K.S.A. 60-223

as amended, and that defendant's Motion for reconsideration should be overruled.

And the Court further specifically finds that:

1) The class hereinafter defined is so numerous that joinder of all members is impracticable; there are questions of law and fact common to the class; the claims of the representative parties are typical of the claims of the class; the representative party plaintiffs will fairly and adequately protect the interests of the class; the prosecution of separate actions by individual members of the class would create a risk of adjudications with respect to individual members of the class which would, as a practical matter, be dispositive of the interests of the other members not parties to such adjudications and might substantially impair or impede their ability to protect their interests; and the questions of law and fact common to the members of the class predominate over any questions affecting only individual members and a class action is superior to the other available means for the fair and efficient adjudication of the controversy.

2) The plaintiff class shall be limited to all persons who were on or before May 1971, entitled to gas royalties (excluding overriding royalties) in the Hugoton-Anadarko area affected by F.P.C. Opinion 586 under leases owned by Northern Natural Gas Producing Company or Mobil Oil Corporation or any of their predecessor companies, and who in about May 1971, received additional amounts of royalty attributable to increased prices paid to defendants subject to refund to the gas purchaser, in and after February 1967, excluding, however, all such royalty owners as to any such royalties in Stevens or Morton Counties, State of Kansas, and affected by the case of *Lightcap* vs. *Socony Mobil Oil Co., Inc.*, case number 4366, Stevens County, Kansas, or any similar actions filed against these

defendants or their predecessor companies in said counties prior to the filing of this action; further excluding any other claims against defendant for royalties not yet paid out and which are or may be the subject of separate litigation.

3) Notice of the nature and pendency of this action and the effects of any judgment herein shall be given to members of the above defined class as follows:

(a) Each member of the class as herein defined whose name and address is contained in defendants' records shall be notified of the pendency and ultimate legal effect of the action and of the right to request exclusion, by sending to each such class member a notice in the form of Exhibit "A", which is attached hereto and made a part hereof by reference. To the extent that such persons are currently the recipients of royalty payments by defendant, the aforesaid notice shall be dispatched to them by defendant.

(b) Defendants shall furnish to counsel for plaintiffs the names and addresses, to the extent such information is reflected by defendants' books and records, of all persons included in the plaintiff class who are not currently receiving royalty payments from defendants. Plaintiffs shall cause to be mailed to each of said persons a copy of this Notice attached hereto as Exhibit "A".

(c) As soon as possible hereafter, defendants will advise counsel for plaintiffs of the approximate number of notices required to be mailed to royalty owners as stated above in paragraph (a) and plaintiffs will supply a sufficient number of copies of this notice for the mailing. Mailings should be made no later than in May 1975, and the time limitation for those

desiring to be excluded should be no later than June 15, 1975, at 10:00 a.m., at which time hearing will be held to determine actual class members.

(d) Plaintiffs shall cause the notice attached hereto as Exhibit "A" to be published beginning the second week in April 1975, once each week for three consecutive weeks in a newspaper of general circulation published in the following locations: Amarillo, Texas; Elkhart, Kansas; Liberal, Kansas; Guymon, Oklahoma; and Ulysses, Kansas.

(e) Plaintiffs will advance the costs pertaining to all publication and mailing referred to in paragraphs (b), (c), and (d) above.

(f) Cases previously filed in this judicial district which encompass part of the class covered by plaintiffs' Petition herein will proceed in the normal course of litigation.

IT IS, THEREFORE, CONSIDERED, ORDERED, ADJUDGED AND DECREED BY THE COURT that the foregoing findings should be and they are hereby made the Order and Judgment of this Court.

Exhibit "A"

NOTICE OF CLASS ACTION SUIT

TO: All persons who were on or before May 1971 entitled to gas royalties (excluding overriding royalties) in the Hugoton-Anadarko area affected by F.P.C. Opinion 586 under leases owned by Northern Natural Gas Producing Company or Mobil Oil Corporation or any of their predecessor companies, and who in about May 1971, received additional amounts of royalty attributable to increased prices paid to defendants subject to refund to the

gas purchaser in and after February 1967, excluding, however, all such royalty owners as to any such royalties in Stevens or Morton Counties, State of Kansas, and affected by the case of *Lightcap* vs. *Socony Mobil Oil Co., Inc.*, Case No. 4366, Stevens County, Kansas, or any similar actions filed against these defendants or their predecessor companies in said counties prior to the filing of this action, further excluding any other claims against defendant for royalties not yet paid out and which are or may be the subject of separate litigation.

This suit was filed in January 1974 by Hazel Nix in her own behalf and on behalf of all persons to whom this notice is directed. Fred Schupbach, Jr., on May 22, 1974, was granted leave to join as a party plaintiff in his own behalf of all other royalty owners similarly situated in the Hugoton-Anadarko area. These named plaintiffs asked judgment against the defendant companies for the payment of interest on increased royalty monies received and withheld by defendants pending final approval by the Federal Power Commission. The leases involved are in Kansas and parts of Texas and Oklahoma.

Defendants have denied any liability to the plaintiffs or members of the above class.

The Court has determined that this action is to be maintained as a class action. Accordingly:

1. The Court will include as members of the plaintiff class herein all of the gas royalty owners addressed above; provided, however, any person or concern so included may by filing a written request to the Clerk of the District Court of Grant County, Ulysses, Kansas 67880, on or before the 14th day of June, 1975, be excluded from the class unless upon notice and after hearing, and for stated reasons, the Court finds that their inclusion

is essential to the fair and efficient adjudication of the controversy. Any class member if he so desires, may appear in the case in person or through his own counsel; otherwise, plaintiffs' counsel will represent him as a member of plaintiff class.

2. Judgment in this action, whether for the plaintiff class or for the defendant, will be binding on all class members except those who may be excluded as above stated. Class members excluded will not be entitled to share in the benefit of any judgment or settlement entered or concluded favorable to the plaintiff class.

3. Plaintiffs' attorneys' fees are contingent on recovery. If plaintiffs are successful, the Court will allow reasonable attorneys' fees for plaintiffs' attorneys. If plaintiffs are unsuccessful, there will be no allowance to the plaintiff class.

Keaton G. Duckworth
Judge of the 26th Judicial District

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